Chapter 10: Juvenile Dispositions

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In this chapter. . .

If the factfinder determines that a juvenile has not committed an offense, the court must enter an order dismissing the petition. If the factfinder determines that a juvenile has committed an offense that would be a criminal offense if committed by an adult, a civil infraction, or a status offense, the court must find that the juvenile is under its jurisdiction. The court may then enter disposition orders, including leaving a juvenile in his or her home but imposing probation conditions, or placing a juvenile in or committing a juvenile to a private or public institution. This chapter discusses the court's authority to enter disposition orders and the required procedures for disposition hearings. It also discusses the requirements for ordering and collecting restitution and the Crime Victim's Rights Fund assessment. Court allocation of funds received from a juvenile or his or her parent for fines, costs, restitution, fees, and assessments is discussed in Section 10.14.

For discussion of related issues, see the following:

- Chapter 11 (costs of dispositions);
- Section 3.7 (places of detention for juveniles and persons over 17 years of age);
- Section 5.15 (limits on placement of Indian children);
- Section 19.1 (juvenile dispositions in designated case proceedings);
- Section 15.22(C) (juvenile dispositions in minor PPO proceedings);
- Chapter 12 (review of a referee's recommended findings and conclusions);
- Section 13.8 (dispositions following violations of probation);
- Chapter 14 (dispositional review hearings);
- Section 2.19 (notice requirements where court has prior continuing jurisdiction over a juvenile); and

- Chapter 25 (reporting and recordkeeping requirements).

Note on court rules. On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and "traditional waiver" proceedings, and to Subchapter 6.900, which govern "automatic waiver" proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook:Delinquency & Criminal Proceedings* (MJI, 1998).

10.1 Purpose of Dispositional Hearings

In delinquency proceedings, dispositional hearings are conducted after a jury or the court has found that a juvenile has committed an offense. The purpose of a disposition hearing is to craft orders concerning the juvenile and his or her parents or other adults to remedy the circumstances that caused the juvenile to come under the court's jurisdiction. MCR 3.943(A) sets forth the general purpose of dispositional hearings:

> "**(A) General.** A dispositional hearing is conducted to determine what measures the court will take with respect to a juvenile and, when applicable, any other person, once the court has determined following trial or plea that the juvenile has committed an offense."

A dispositional hearing may also be conducted in designated case proceedings if the court chooses to order a disposition following conviction instead of sentencing the juvenile as an adult. MCL 712A.2d(8) and MCL 712A.18(1)(n).*

*See Section 19.1 (court's options following conviction in designated cases).

10.2 Time Requirements for Dispositional Hearings

MCR 3.943(B) states that "[t]he interval between the plea of admission or trial and disposition, if any, is within the court's discretion. When the juvenile is detained, the interval may not be more than 35 days, except for good cause."

The dispositional phase of proceedings may immediately follow the adjudicative phase where the parties do not object, and where they have notice of the proceedings and an opportunity to present suggestions and objections. *In re Hardin,* 184 Mich App 107, 109 (1990), and *In re Chapel,* 134 Mich App 308, 314 (1984).*

*See also Section 10.7 below, discussing a victim's right to make an impact statement.

10.3 Right to Have Judge Preside at Dispositional Hearing

"The right to a jury in a juvenile proceeding exists only at the trial." MCR 3.911(A).

*See Section 7.10 for discussion of demands for trial by judge or jury.

Parties have a right to a judge at a hearing on the formal calendar. MCR 3.912(B). MCR 3.903(A)(10) defines "formal calendar" as judicial proceedings other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding. Thus, a party may be entitled to have a judge conduct a dispositional hearing. MCR 3.913(B) states that unless a party has demanded a trial by judge or jury,* a referee may conduct the trial and further proceedings through the dispositional phase. Thus, if a referee tries a case, that same referee may conduct dispositional and dispositional review hearings even if the juvenile later requests that a judge preside at a hearing.

*See Section 19.1 (court's options following convictions in designated cases).

If a juvenile disposition rather than an adult sentence is imposed following trial or plea in designated case proceedings, the juvenile does not have the right to have the same judge who presided at trial or who accepted a plea in the designated case preside at the dispositional hearing. MCR 3.912(C)(2).*

10.4 Persons Entitled or Required to Be Present at Dispositional Hearings

Juvenile. "The juvenile may be excused from part of the dispositional hearing for good cause shown, but must be present when the disposition is announced." MCR 3.943(D)(1).

*See Section 2.12 for a detailed discussion of MCL 712A.6a.

Parent or guardian. A provision of the Juvenile Code, MCL 712A.6a, requires the parent or guardian of a juvenile who is within the court's jurisdiction under MCL 712A.2(a)(1) (criminal offenses) to attend all hearings unless excused for good cause. Thus, parents or guardians may be required to attend dispositional and dispositional review hearings. This provision may be enforced through the court's contempt power.*

Prosecuting attorney. If the court requests, the prosecuting attorney must appear at any delinquency proceeding. MCR 3.914(A) and MCL 712A.17(4). If an offense that would be a criminal offense if committed by an adult is alleged, the prosecuting attorney must participate in every delinquency proceeding "that requires a hearing and the taking of testimony." MCR 3.914(B)(2). MCL 712A.17(4) only requires the prosecuting attorney to *appear* if a criminal offense is alleged and the proceeding requires a hearing and the taking of testimony. Thus, if a status offense is alleged, the prosecuting attorney must appear at a dispositional hearing if the court requests; if a criminal offense is alleged, the prosecuting attorney must appear and participate in a dispositional hearing.

The prosecuting attorney may be a county prosecuting attorney, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, or, if an ordinance violation is alleged, an attorney for the political subdivision or governmental entity that enacted the ordinance, charter, rule, or regulation upon which the ordinance violation is based. MCR 3.903(B)(4).

Victim. MCR 3.943(D)(2) states that "[t]he victim has the right to be present at the dispositional hearing and to make an impact statement as provided in the Crime Victim's Rights Act, MCL 780.751 *et seq*."*

*See also Section 10.7, below (victim's right to make impact statement).

10.5 Advice of Right to Counsel

If a juvenile charged with an offense that would be a criminal offense if committed by an adult or a status offense is not represented by an attorney, the court must advise the juvenile of the right to the assistance of counsel at each stage of the proceedings. MCL 712A.17c(1). MCR 3.915(A)(1) states that this advice is required "at each stage of the proceedings on the formal calendar, including . . . disposition."*

*See Section 5.7(C) for the requirements for a valid waiver of counsel.

10.6 Evidentiary Standards at Dispositional Hearings

MCR 3.943(C)(1)–(3) govern the admissibility of evidence at dispositional hearings. These rules state:

> "**(C) Evidence.**
>
> (1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at dispositional hearings. All relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though such evidence may not be admissible at trial.
>
> (2) The juvenile, or the juvenile's attorney, and the petitioner shall be afforded an opportunity to examine and controvert written reports so received and, in the court's discretion, may be allowed to cross-examine individuals making reports when such individuals are reasonably available.
>
> "(3) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at a dispositional hearing, of materials prepared

> pursuant to a court-ordered examination, interview, or course of treatment."

MCR 3.943(C)(1) does not mandate consideration of any particular report. Because a juvenile dispositional proceeding is not criminal or governed by the Code of Criminal Procedure, the Family Division need not consider a sentencing information report as required for adults. *In re Lowe,* 177 Mich App 45, 47 (1989).

The proper procedure for the court to follow is to take sworn testimony on the record, allow defense counsel and the prosecuting attorney to argue for an appropriate disposition, and articulate reasons for the disposition imposed. *In re Chapel,* 134 Mich App 308, 314–15 (1984), relying on *People v Coles,* 417 Mich 523 (1983). See also *In re Barber,* 168 Mich App 661, 665–66 (1988) (duty of juvenile court judge to respond to allegations of inaccuracy in a social report is analogous to the duty of a judge in a criminal case to respond to alleged inaccuracies in a presentence report).

However, sworn testimony may often not be taken at dispositional hearings. A probation officer or caseworker assigned to the juvenile's case may submit a report and recommendation for disposition. Defense counsel may make a statement agreeing with or disputing the recommendation. In addition to the probation officer's or caseworker's report, the court may receive reports from the juvenile's school, psychological evaluations, substance abuse evaluations, and, if commitment to the Family Independence Agency is contemplated, the classification and assignment report submitted by a delinquency services worker.

When the court orders a person to be examined by a physician, psychiatrist, social worker, or other professional, the professional's interview and opinion cannot be excluded from the dispositional hearing on the theory that it is privileged. MCR 3.943(C)(3) and *In re Lowe,* 177 Mich App 45, 47 (1989).

10.7 Victim Impact Statements

A crime victim has the rights to submit an impact statement for inclusion in a disposition or presentence investigation report and to deliver an oral impact statement to the court at disposition or sentencing. In a criminal case, a sentencing court may properly consider the actual or possible impact of the crime on the victim in tailoring the sentence. See *Payne v Tennessee,* 501 US 808, 825 (1991) ("[v]ictim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities"), and *People v Girardin,* 165 Mich App 264, 266–67 (1987) (the sentencing court could consider the possible future psychological repercussions to the six-year-old sexual assault victim even though no evidence established that such repercussions would occur).

Notice of the right to submit an impact statement for inclusion in disposition or sentencing report. In juvenile delinquency and designated case proceedings, a victim has the right to submit an oral or written impact statement if a disposition or presentence investigation report is prepared. MCL 780.792(1) and (3). If a report is to be prepared, the person preparing the report must give the victim notice of the following:

> "(a) The victim's right to make an impact statement for use in preparing the report.
>
> "(b) The address and telephone number of the person who is to prepare the report.
>
> "(c) The fact that the report and any statement of the victim included in the report will be made available to the juvenile unless exempted from disclosure by the court." MCL 780.791(2)(a)–(c).

A sentencing court may exempt from disclosure "sources of information obtained on a promise of confidentiality." MCL 771.14(3), MCL 771.14a(2), and MCR 6.425(B). If the court exempts information from disclosure, the court must inform the parties of the nondisclosure, note the exemption in the PSIR, and state on the record its reasons for this action. MCR 6.425(B). See *People v Mellado,* unpublished opinion per curiam of the Court of Appeals, decided March 12, 1992 (Docket No. 133711) (resentencing was required where the trial court exempted victim impact statements from disclosure to defendant before sentencing without following the procedures required by MCR 6.425(B)).

Oral victim impact statements. In addition to providing impact information for inclusion in a dispositional report, a victim or a person designated by a victim may deliver an oral impact statement to the court at the disposition hearing. MCL 780.793(1) states:

> "The victim has the right to appear and make an oral impact statement at the juvenile's disposition or sentencing. If the victim is physically or emotionally unable to make the oral impact statement, the victim may designate any other person 18 years of age or older who is neither the defendant nor incarcerated to make the statement on his or her behalf. The other person need not be an attorney."

Note: If a person chosen by the victim will deliver the oral impact statement, the victim should provide his or her designee with a written statement to read to the court.

Contents of victim impact statements. MCL 780.791(3)(a)–(d) state that the victim's impact statements may include but are not limited to the following:

> "(a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.
>
> "(b) An explanation of the extent of any economic loss or property damage suffered by the victim.
>
> "(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.*
>
> "(d) The victim's recommendation for an appropriate disposition or sentence."

*See Section 10.12, below, for a detailed discussion of restitution.

In criminal cases, the court must give the victim "an opportunity to advise the court of any circumstances [he or she] believe[s] the court should consider in imposing sentence." MCR 6.425(D)(2)(c). See also *People v Steele,* 173 Mich App 502, 504–05 (1988) (although the victim's impact statements were emotional, they were within her statutory rights, and the defendant did not object to the statements).

Letters from victims. Prior to sentencing in a criminal case, a victim may send a letter to the court describing the effects of the crime. In *People v McAllister,* 241 Mich App 466, 474–75 (2000), the defendant argued that he was entitled to examine letters sent by the victim and the victim's family to the court prior to sentencing. The defendant cited *United States v Hayes,* 171 F3d 389 (CA 6, 1999), in which the sentencing court relied on the victims' letters in imposing the maximum possible sentence. The *Hayes* court held that reversal is required where the sentencing court relies on ex-parte communications in determining a defendant's sentence. The Court of Appeals in *McAllister* distinguished *Hayes,* finding that there was no evidence that the sentencing court relied on the letters' contents in sentencing the defendant. Moreover, the contents of the victim's letter to the court were cumulative to evidence admitted at trial and information disclosed by the victim's oral impact statement. The Court of Appeals also expressed confidence that trial judges "are able to separate the evidence at trial from the subjective requests of victims or their family members." *McAllister, supra* at 476. Judge Whitbeck concurred in the result but wrote separately to state that such letters should be disclosed in all cases because the sentencing court must allow the defendant an opportunity to rebut or explain facts introduced for the purpose of sentencing. *Id.* at 479, citing *People v Ewing (After Remand),* 435 Mich 443, 446, 474 (1990).

Thus, if the court receives letters directly from a victim or others, such letters must be disclosed to the parties prior to disposition or sentencing if

the court will rely on information contained in the letters. If the letters are disclosed, victim identifying information should be deleted. MCR 3.903(A)(3)(a) and (b)(v)–(vi).

Impact statements by third parties. In *People v Kisielewicz,* 156 Mich App 724, 728–29 (1986), the defendant was convicted of vehicular manslaughter. The presentence investigation report contained copies of letters from the deceased victim's parents, grandparents, aunt, uncle, and an attorney. The Court of Appeals held that the sentencing judge properly considered all of the letters. The letters from the deceased victim's parents were properly included in the PSIR under MCL 780.764 of the Crime Victim's Rights Act because the parents met the statutory definition of "victim."* Although the other letters were not from "victims" as defined by statute, the letters concerned society's need to be protected from the offender, which is a valid sentencing consideration.

*See Section 4.3(A) for the statutory definition of "victim."

In *People v Albert,* 207 Mich App 73, 74 (1994), the Court of Appeals found no error in allowing an attorney who was representing one of the victims in a separate civil suit to address the court at sentencing. The attorney called the defendant, who was convicted of criminal sexual conduct against two child victims, a "pedophiliac." The Court of Appeals concluded that the sentencing court was entitled to consider relevant information about the defendant's life and circumstances, and no bias or prejudice resulted from the attorney's statements. *Id.* at 74–75.

10.8 Required Evaluation of Juveniles Adjudicated of Cruelty to Animals or Arson

Juveniles found responsible for an offense that if committed by an adult would constitute cruelty to animals or arson must be evaluated to determine the need for psychiatric or psychological treatment. MCL 712A.18*l* states:

> "If a juvenile is found to be within the court's jurisdiction under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation of [MCL 750.50b], having to do with cruelty to animals, or would be a violation of [MCL 750.71–750.80], having to do with arson, the court shall order that the juvenile be evaluated to determine the need for psychiatric or psychological treatment. If the court determines that psychiatric or psychological treatment is appropriate for that juvenile, the court may order that treatment. This section does not preclude the court from entering any other order of disposition allowed under this chapter."

10.9 Dispositional Options Available to Court

*See Section 2.11 for discussion of the Family Division's jurisdiction and authority over civil infractions.

MCR 3.943(E)(1) provides that if a juvenile has been found to have committed an offense, the court may enter an order of disposition as provided by MCL 712A.18. Under MCR 3.903(B)(3), "offense by a juvenile" includes a violation of a criminal law or ordinance, violation of a traffic law, or commission of a status offense.*

MCL 712A.18(1) states as follows:

> "If the court finds that a juvenile concerning whom a petition is filed is not within this chapter, the court shall enter an order dismissing the petition. Except as otherwise provided in subsection (10) [dealing with fingerprinting], if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained . . . ."

Both the Juvenile Code and the applicable court rules state a preference for leaving the juvenile in his or her home. See MCL 712A.1(3) and MCR 3.902(B). "If a juvenile is removed from the control of his or her parents, the juvenile shall be placed in care as nearly as possible equivalent to the care that should have been given to the juvenile by his or her parents." MCL 712A.1(3). MCR 3.902(B)(2) contains substantially similar language.

The court's dispositional options are as follows:

A. Warning Juvenile and Dismissing Petition

The court may warn the juvenile or the juvenile's parents, guardian, or custodian and dismiss the petition. MCL 712A.18(1)(a).

*See Section 10.12 below (requirements for ordering restitution).

However, if the juvenile's offense has resulted in financial damages to any victim, then the court must order the juvenile and may order the juvenile's parent to pay restitution pursuant to MCL 712A.30 and 712A.31 and relevant provisions of the Crime Victim's Rights Act. MCL 712A.18(7).*

B. Appointing a Guardian

Pursuant to a petition filed with the court by a person interested in the welfare of the juvenile, the court may appoint a guardian under MCL 700.424 or 700.5204. MCL 712A.18(1)(h). Note, however, that this provision does not allow the court to appoint a guardian unless a petition is filed by the prospective guardian. If the court appoints a guardian in response to a petition filed by a person interested in the juvenile's welfare,

it may enter an order dismissing the petition under this chapter. MCL 712A.18(1)(h).

C. In-Home Probation

The court may "[p]lace the juvenile on probation, or under supervision in the juvenile's own home or in the home of an adult who is related to the juvenile. As used in this subdivision, 'related' means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by blood, marriage, or adoption." MCL 712A.18(1)(b).

MCL 712A.18(1)(b) also requires the court to order terms and conditions of probation, including rules governing the conduct of parents, guardians, or custodians. "The court shall order the terms and conditions of probation or supervision, including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court deems necessary for the physical, mental, or moral well-being and behavior of the juvenile." *Id.**

* See Section 10.9(L), below, for further discussion of the court's authority to enter orders concerning adults.

Unlike the statutes governing probation in criminal cases, §18 of the Juvenile Code does not contain mandatory and discretionary probation terms and conditions.* MCL 771.3(1) contains required probation conditions, including that the probationer not violate any criminal law, not leave the state without the court's consent, and report to the probation officer in person or in writing as often as required. See *In re Belcher,* 143 Mich App 68, 69–70 (1985). MCL 771.3(2) contains conditions that may be in a probation order, and MCL 771.3(4) allows the court to "impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper." "Other lawful conditions" must be rationally related to the rehabilitation of the offender. *People v Miller,* 182 Mich App 711, 713 (1990).

*But see Section 10.12(N), below, for mandatory conditions when restitution has been ordered as a condition of probation.

D. Community Service

The court may order the juvenile to engage in community service. MCL 712A.18(1)(i).*

*See Section 10.12(N), below, for a discussion of restitution and community service or employment as condition of probation.

E. Foster Care

The court may place the juvenile in a suitable foster care home subject to the court's supervision. MCL 712A.18(1)(c).

F. Juvenile Boot Camp

*See Section 25.8 for a definition of "County Juvenile Agency."

The court may place the juvenile in and order the juvenile to complete satisfactorily a program of training in a juvenile boot camp established by the Family Independence Agency under the Juvenile Boot Camp Act, MCL 400.1301 et seq. MCL 712A.18(1)(m). If the county is a County Juvenile Agency, the court must commit a juvenile to the County Juvenile Agency for placement in a boot camp program. *Id.**

Juvenile boot camp programs are described in MCL 400.1304. "A juvenile boot camp program shall provide a program of physically strenuous work and exercise, patterned after military basic training, and other programming as the [FIA] determines, including at a minimum educational and substance abuse programs, and counseling."

To place a juvenile in or commit a juvenile to a juvenile boot camp program, a court or County Juvenile Agency shall determine all of the following:

> "(i) Placement in a juvenile boot camp will benefit the juvenile.
>
> "(ii) The juvenile is physically able to participate in the program.
>
> "(iii) The juvenile does not appear to have any mental handicap that would prevent participation in the program.
>
> "(iv) The juvenile will not be a danger to other juveniles in the boot camp.
>
> "(v) There is an opening in a juvenile boot camp program.
>
> "(vi) If the court must commit the juvenile to a county juvenile agency, the county juvenile agency is able to place the juvenile in a juvenile boot camp program." MCL 712A.18(1)(m)(i)–(vi).

The court may order the juvenile to remain in the boot camp for a period of 90–180 days. MCL 400.1305(2). Following satisfactory completion of the juvenile boot camp program, the juvenile shall complete an additional period of not less than 120 days or more than 180 days of intensive supervised community reintegration in the juvenile's local community. MCL 712A.18(1)(m) and MCL 400.1305(3).

If a juvenile does not meet the program's requirements or perform satisfactorily or if there is no opening in a program, the juvenile must be returned to the court for entry of an alternative order of disposition. MCL

712A.18(14) and MCL 400.1305(1)–(2). A juvenile shall not be placed in a juvenile boot camp pursuant to an order of disposition more than once, except that a juvenile returned to the court for a medical condition or because there was not an opening in a juvenile boot camp program may be placed again in the juvenile boot camp program after the medical condition is corrected or an opening becomes available. MCL 712A.18(14).

G. Placement in or Commitment to a Private Institution or Agency

The court may place the juvenile in or commit the juvenile to a private institution or agency approved or licensed by the Department of Consumer and Industry Services for the care of juveniles of similar age, sex, and characteristics. MCL 712A.18(1)(d).* The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24.

*For a statewide list of licensed institutions and agencies, go to www.cis.state.mi.us/brs.

Special requirements when a juvenile is placed outside of Michigan. MCL 712A.18a sets forth special requirements for placing a juvenile in or committing a juvenile to a private institution or agency outside of Michigan. That statute states:

> "If desirable or necessary, the court may place a ward of the court in or commit a ward of the court to a private institution or agency incorporated under the laws of another state and approved or licensed by that state's department of social welfare, or the equivalent approving or licensing agency, for the care of children of similar age, sex, and characteristics."

MCR 3.943(E)(3)(a)–(c) provide, however, that before a juvenile may be placed in an institution outside of Michigan, the court must find that:

> "(a) institutional care is in the best interests of the juvenile,
>
> "(b) equivalent facilities to meet the juvenile's needs are not available within Michigan, and
>
> "(c) the placement will not cause undue hardship."

Distinguishing between placement and commitment. Committing the juvenile to a private institution or agency does not divest the Family Division of jurisdiction unless the juvenile is adopted in a manner provided by law. MCL 712A.5. However, while placement of a juvenile in an institution preserves the court's authority to specify the manner in which the juvenile will be housed and treated, a commitment does limit the court's authority to enter more specific orders concerning the juvenile. See *In re Meeboer,* 134 Mich App 294, 298 (1984) (although commitment does not

require removal from the home, MCL 803.303, it does deprive the court of authority to supervise the child while under the court's jurisdiction), and *Petition of Wehr,* 88 Mich App 184, 193 (1979) ("Since the word "place" does not carry the connotations of finality and severance of authority inherent in the term "commit", we conclude that the Legislature used these terms advisedly and intended a commitment under [MCL 712A.18(1)(e)] to be final and irrevocable"). Commitments under MCL 712A.18(1)(e) are discussed further in the next subsection.

H. Commitment to a Public Institution or Agency

MCL 712A.18(1)(e) states in part:

> "Except as otherwise provided in this subdivision, [the court may] commit the juvenile to a public institution, county facility, institution operated as an agency of the court or county, or agency authorized by law to receive juveniles of similar age, sex, and characteristics. If the juvenile is not a ward of the court, the court shall commit the juvenile to the family independence agency or, if the county is a county juvenile agency, to that county juvenile agency for placement in or commitment to such an institution or facility as the family independence agency or county juvenile agency determines is most appropriate, subject to any initial level of placement the court designates. If a child is not less than 17 years of age and is in violation of a personal protection order, the court may commit the child to a county jail within the adult prisoner population. In a placement under subdivision (d)* or a commitment under this subdivision, except to a state institution or a county juvenile agency institution, the juvenile's religious affiliation shall be protected by placement or commitment to a private child-placing or child-caring agency or institution, if available."

*See Section 10.9(G), immediately above.

*If the court designates an initial level of placement, eligibility for funding under Title IV-E of the Social Security Act is affected. See Section 11.1.

In *In re Family Independence Agency (On Rehearing),* 248 Mich App 565 (2001), the Family Division judge entered an order of disposition continuing the juvenile as a temporary court ward, directing that the juvenile be placed at "Maxey Boys Training School to receive treatment as a sex offender," and committing the juvenile to the FIA. The FIA sought an order of superintending control, arguing that the court's order deprived it of its authority under MCL 712A.18(1)(e) to determine an appropriate placement for the juvenile. The Court of Appeals upheld the disposition order. The Court of Appeals concluded that the first sentence of §18(1)(e) gives the Family Division general authority to commit juveniles to the facilities and institutions designated in the statute. The only limitation on that authority arises when the juvenile is not continued as a court ward. *In re Family Independence Agency, supra* at 569. If the juvenile is not a court ward, the

court must commit the juvenile to the FIA or a county juvenile agency and may only designate an initial level of placement.* The Court of Appeals recognized that §18(1)(e) does not address disposition orders that both commit a juvenile to FIA and continue the juvenile as a court ward but stated that the Legislature must address that issue rather than an appellate court. *In re Family Independence Agency, supra* at 572.

Juveniles may be committed to a county FIA office "for placement and care" under MCL 400.55(h). See SCAO Form JC 25. MCL 400.55(h) requires a county office of the Family Independence Agency to provide supervision of or foster care services to delinquent children under the Family Division's jurisdiction when ordered by the court. Juveniles may also be committed as "public wards" to the FIA pursuant to the Youth Rehabilitation Services Act, MCL 803.301 et seq. "Public ward" is defined in MCL 803.302(c) as:

> "(*i*) A youth accepted for care by a youth agency who is at least 12 years of age when committed to the youth agency by the . . . family division of circuit court under [MCL 712A.18(1)(e)], if the court acquired jurisdiction over the youth under [MCL 712A.2(a) or (d)], and the act for which the youth is committed occurred before his or her seventeenth birthday.
>
> "(*ii*) A youth accepted for care by a youth agency who is at least 14 years of age when committed to the youth agency by a court of general criminal jurisdiction under [MCL 769.1], if the act for which the youth is committed occurred before his or her seventeenth birthday."*

*This sub-subsection refers to juveniles placed on probation and committed to the FIA following "automatic waiver" proceedings. See Section 21.6 for further discussion.

A "youth agency" is either the FIA or a "county juvenile agency." MCL 803.302(d). "County juvenile agency" is defined in the "County Juvenile Act," MCL 45.621 et seq. MCL 803.302(a). Because the act applies only to a county that is eligible for transfer of federal Title IV-E funds under a 1997 waiver, the act only applies to Wayne County. The act and related amendments to other statutes allow a "county juvenile agency" to provide services to juveniles "within or likely to come within" the Family Division's jurisdiction of criminal offenses by juveniles and the Criminal Division's jurisdiction over "automatically waived" juveniles.

The FIA or "county juvenile agency" has custody of a "public ward" as provided in MCL 803.303 and may place him or her as provided in MCL 803.304 and 400.115b(1). "Public wards" must be discharged from wardship pursuant to MCL 803.307.*

*See Section 22.10 for further discussion.

The court must transmit with the order of disposition a summary of its information concerning the child. MCL 712A.24.

I. Commitment to Detention Facility for Use of a Firearm

Under MCL 712A.18g(1)(c) and MCR 3.943(E)(7)(a), a juvenile must be committed under MCL 712A.18(1)(e) to a detention facility for a specified period of time if the court finds that the juvenile used a firearm during a criminal violation. The period of time in detention shall not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult for the offense. MCL 712A.18g(2) and MCR 3.943(E)(7)(b).

"Firearm" means any weapon from which a dangerous projectile may be propelled using explosives, gas, or air as a means of propulsion, except any smooth-bore rifle or handgun designed and manufactured exclusively for propelling BB's not exceeding .177 caliber by means of spring, gas, or air. MCL 712A.18g(3) and MCR 3.943(E)(7)(c). "Use" of a firearm is not defined in the statute or court rule. However, comparison of these provisions to the felony firearm statute, MCL 750.227b, may be instructive. The felony firearm statute prohibits possession of a firearm during the commission or attempted commission of an offense.

This provision does not apply to juveniles sentenced as adults following conviction in designated case proceedings. MCL 712A.18g(1) and MCR 3.943(E)(7)(a). However, the provision does appear to apply to cases in which the court delays imposition of sentence and places the juvenile on probation in designated cases.* MCL 712A.18(1)(n) provides that in such cases, the court may order any probation terms and conditions it considers appropriate, including any disposition under §18 of the Juvenile Code.

*See Section 19.1 (court's options following conviction in a designated case proceeding).

J. Civil Fines

The court may order the juvenile to pay a civil fine in the amount of the penal fine provided by the ordinance or law that was violated by the juvenile. MCL 712A.18(1)(j).

The maximum amount of a penal fine is usually found in the penal statute that defines the offense. If the penal statute is silent on the amount of the fine, then the maximum amount of the fine shall be $2000.00 for a felony and $100.00 for a misdemeanor. MCL 750.503 and 750.504.

"Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown." MCR 1.110.

K. Court Costs

The court may order the juvenile to pay court costs. MCL 712A.18(1)(k). In criminal cases, costs may not be imposed as part of a defendant's prison sentence unless the costs are expressly authorized by a procedural statute or

court rule, or by the penal statute under which a defendant was convicted. *People v Krieger,* 202 Mich App 245, 247 (1993). MCL 769.1f allows a court to order a person convicted of an enumerated offense to reimburse the state or a local unit of government for law enforcement, emergency medical response, fire department, prosecutorial, and other expenses incurred in relation to the incident. If a criminal defendant is placed on probation, the sentencing court may order the defendant to pay costs as a condition of probation. MCL 771.3(2)(c). Such costs must be limited to expenses specifically incurred in prosecuting the defendant, providing legal assistance to the defendant, and providing probation supervision of the defendant. MCL 771.3(6). The general rule is that court costs must bear a reasonable relationship to actual expenses incurred in the defendant's case. See *People v Blachura,* 81 Mich App 399, 403–04 (1978) (it was improper to assess a flat fee of $1000.00 in costs for each count in a five-count information). The costs must be assessed to reimburse the court for expenditures reasonably and properly made in defendant's case, rather than to punish defendant for his offense. *People v Teasdale,* 335 Mich 1, 8 (1952).

In designated case proceedings, if the court imposes a sentence of probation in the same manner as probation could be imposed upon an adult or enters an order of disposition delaying imposition of sentence and placing a juvenile on probation, the probation supervision and related services shall not be performed by employees of the Department of Corrections. MCL 712A.9a. Thus, in such cases, a probation supervision fee would not be paid to the Department of Corrections pursuant to MCL 771.3c but to the Family Division pursuant to MCL 712A.18.*

*See Sections 19.7 (requirements for delayed imposition of sentence) and 11.2 (reimbursement of costs when juvenile is placed outside home).

"Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown." MCR 1.110.

Hearings on amount or ability to pay. A sentencing court is not required to hold a hearing to determine a criminal defendant's ability to pay before ordering a defendant to pay costs as part of defendant's sentence. In *People v Music,* 428 Mich 356, 361–62 (1987), the Supreme Court held that the sentencing judge is not required to hold a hearing at sentencing unless the defendant requests such a hearing. Otherwise, a hearing shall be held only at such time that defendant fails to make the required payments. Furthermore, a defendant who does not timely challenge the amount of costs waives his or her right on appeal to challenge an order for costs that appears on its face to be a reasonable approximation of costs permitted by MCL 771.3(4). *Id.* at 363.

However, if a defendant does request such a hearing, the following provisions apply:

> "(a) The court shall not require a probationer to pay costs unless the probationer is or will be able to pay them

during the term of probation. In determining the amount and method of payment of costs, the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations.

"(b) A probationer who is required to pay costs and who is not in willful default of the payment of the costs may petition the sentencing judge or his or her successor at any time for a remission of the payment of any unpaid portion of those costs. If the court determines that payment of the amount due will impose a manifest hardship on the probationer or his or her immediate family, the court may remit all or part of the amount due in costs or modify the method of payment." MCL 771.3(7)(a)–(b).*

*See also MCL 769.1f(5) and (7).

Probation revocation for willful failure to pay costs. Probation may not be revoked for failure to pay fines, costs, or restitution if the reason for non-payment was the defendant's indigence. *Bearden v Georgia,* 461 US 660, 664 (1983), *People v Terminelli,* 68 Mich App 635, 637–38 (1976), and *People v Lemon,* 80 Mich App 737, 745 (1978). In criminal cases, the court has authority to alter and amend conditions of probation. MCL 771.2(2). Upon petition by the probationer, the court should conduct a hearing to determine whether the probation order should be modified. *People v Ford,* 410 Mich 902 (1981), and *Lemon, supra* at 743 (sentencing court abused its discretion by refusing to modify the restitution condition of the probation order where the defendant petitioned for modification of the order).

In a criminal case, the sentencing judge may revoke a defendant's probation because of the defendant's failure to pay costs only if the judge finds that defendant has not made a good-faith effort to comply with the order for costs. In determining this, the judge shall consider defendant's employment status, earning ability, financial resources, the willfulness of defendant's failure to pay, and any other special circumstances that may have a bearing on defendant's ability to pay. MCL 771.3(9).

These required findings are necessary to avoid an equal protection violation when a defendant or juvenile is incarcerated for failing to pay fines, costs, or restitution. A sentence that exposes an indigent offender to incarceration unless he or she pays fines, costs, or restitution violates the Equal Protection Clauses of the state and federal constitutions because it results in unequal punishments based on ability to pay the fines, costs, or restitution. *Tate v Short,* 401 US 395, 397–400 (1971), and *People v Baker,* 120 Mich App 89, 99 (1982). In *People v Collins,* 239 Mich App 125 (1999), the trial court sentenced defendant to 48 months of probation, including a year in jail. The sentence provided that 270 days of the jail time would be suspended if defendant paid $31,505.50 in restitution. Defendant sought a hearing on his ability to pay the restitution, but the trial court denied defendant's request.

The trial court reasoned that defendant was not being jailed for failing to pay restitution; instead, he was being denied a suspension of the sentence for failing to meet a condition of the suspension. The Court of Appeals rejected the trial court's distinction. *Id.* at 133. Defendant could not be required to serve the suspended portion of the sentence without findings by the trial court that defendant had the ability to pay the restitution and had willfully defaulted. *Id.* at 136. The Court of Appeals remanded the case to the trial court for findings on these issues.

Use of bail money to pay costs. MCR 3.935(F)(4)(a) permits the application of bail money paid by a parent to costs and reimbursement of the costs of care and service. MCR 6.106(I)(3) and MCL 765.15(2) permit the application of bail money after conviction against costs, fines, restitution, and other assessments. See also MCL 765.6c, which states that when a defendant personally pays his or her own bond, he or she shall be notified that this money may be used to pay fines, costs, restitution, or other payments ordered by the court.

L. Orders Directed to Parents and Other Adults

Orders to refrain from conduct harmful to the juvenile. The court may order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under the court's jurisdiction, or that obstructs placement or commitment of the juvenile pursuant to a dispositional order. MCL 712A.18(1)(g). See also MCL 712A.6 (Family Division has jurisdiction over adults and may make such orders affecting adults the court finds necessary for physical, mental, or moral well-being of children under its jurisdiction).*

*See Section 2.13.

In *In re Macomber,* 436 Mich 386, 393, 398 (1990), the Michigan Supreme Court found that the trial court's authority to make dispositional orders extends beyond remedies listed in MCL 712A.18. The Court stated the following:

> "Thus, we hold that the Legislature has conferred very broad authority to the probate court. There are no limits to the 'conduct' [under MCL 712A.18(1)(g)] which the court might find harmful to a child. The Legislature intended that the court be free to define 'conduct' as it chooses. Moreover, in light of the directive that these provisions are to be 'liberally construed' [under MCL 712A.1(3)] in favor of allowing a child to remain in the home, we find these sections supportive of the court's order prohibiting the father from living with his daughter." *Macomber, supra,* at 393.

Order to parent or guardian to participate in treatment. The court may order the juvenile's parent or guardian to personally participate in treatment

reasonably available in the parent's or guardian's location. MCL 712A.18(1)(l).

*See Chapter 6 for discussion of notice and service requirements.

Notice and hearing requirements. "An order directed to a parent or a person other than the juvenile is not effective and binding on the parent or other person unless opportunity for hearing is given by issuance of summons or notice as provided in sections 12 and 13 of [the Juvenile Code] and until a copy of the order, bearing the seal of the court, is served on the parent or other person as provided in section 13 of [the Juvenile Code]." MCL 712A.18(4).*

M. Order for Health Care

The court may provide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as much as possible a local physician-patient relationship, and with clothing and other incidental items as the court considers necessary. MCL 712A.18(1)(f).

A provision of the Child Care Organizations Act, MCL 722.124a, limits the authority of persons other than parents to consent to non-emergency medical treatment. That statute states in relevant part:

> "(1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to . . . [MCL] 400.1 to 400.121 . . . , [MCL] 710.21 to 712A.28 . . . , or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.
>
> . . . .
>
> "(3) Only the minor child's parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency,

> elective surgery shall be given by the probate court or the agency having jurisdiction over the child.
>
> "(4) As used in this section, 'routine, nonsurgical medical care' does not include contraceptive treatment, services, medication or devices."

MCL 722.124a applies when a child is "placed in out-of-home care." MCL 712A.18(1)(f), on the other hand, allows a court to order medical treatment as "the court considers necessary." Moreover, when the court has taken jurisdiction over a juvenile, parental rights are effectively suspended, with the court acting in the place of a parent.

10.10 Required Procedures When a Juvenile Escapes From Placement

Notification of law enforcement agency and victim that juvenile has escaped. MCL 712A.18j requires notification of a law enforcement agency when a juvenile escapes from a facility or residence in which he or she has been placed. MCL 712A.18j(1) states:

> "If a juvenile escapes from a facility or residence in which he or she has been placed for a violation described in section 2(a)(1) of this chapter [criminal offenses], other than his or her own home or the home of his or her parent or guardian, the individual at that facility or residence who has responsibility for maintaining custody of the juvenile at the time of the escape shall immediately notify 1 of the following of the escape or cause 1 of the following to be immediately notified of the escape:
>
> > (a) If the escape occurs in a city, village, or township that has a police department, the police department of that city, village, or township.
> >
> > (b) Except as provided in subdivision (a), 1 of the following:
> >
> > (i) The sheriff department of the county in which the escape occurs.
> >
> > (ii) The department of state police post having jurisdiction over the area in which the escape occurs."

MCL 400.115n and MCL 803.306a contain substantially similar provisions dealing with juveniles placed with FIA and juveniles committed to FIA (public wards), respectively. These provisions apply to juveniles placed

with or committed to FIA following delinquency, designated case, or "automatic waiver" proceedings.

In juvenile delinquency proceedings, if the victim requests in writing, the Family Independence Agency, county juvenile agency, or court must give the victim notice of the juvenile's escape from "a secure detention or treatment facility." MCL 780.798(3). The victim must be given "immediate notice of the escape by any means reasonably calculated to give prompt actual notice." *Id.*

A juvenile's escape must be entered into the Law Enforcement Information Network ("LEIN"). MCL 400.115n(1)–(2) and MCL 712A.18j(1)–(2).

Apprehension of juveniles absent from placement without authority. The Family Division may issue an order to apprehend a juvenile who is absent without leave from a facility or institution in which the juvenile has been placed. Like an arrest warrant for an adult, the Family Division's order may only issue upon probable cause and must specify the juvenile and the place where the juvenile may be found. MCL 712A.2c states in part:

> "The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who is absent without leave from an institution or facility to which he or she was committed under [MCL 712A.18] . . . . The order shall set forth specifically the identity of the juvenile sought and the house, building, or other location or place where there is probable cause to believe the juvenile is to be found."

However, MCL 803.306(1), which deals with juveniles committed to FIA as public wards, provides that a juvenile apprehended after being absent without approval may be returned to placement. That provision states:

> "(1) A public ward shall not absent himself or herself from the facility or residence in which he or she has been placed without the youth agency's prior approval. A public ward who violates this provision may be returned to the facility in which he or she was placed by a peace officer without a warrant. A person who knows the whereabouts of a public ward who violates this subsection shall immediately notify the youth agency and the nearest peace officer."

Procedures required to detain a juvenile. If a juvenile is apprehended and brought to court, the juvenile may be detained without bail. MCR 3.946 sets forth the required procedure following apprehension of a juvenile who is absent without leave from a placement. The rule applies only to juveniles who were found responsible for offenses that would be criminal if committed by an adult.* MCR 3.946 states:

*For the requirements for detaining a status offender, see Section 3.8.

> "(A) If a juvenile who has been found to have committed an offense that would be a misdemeanor or a felony if committed by an adult has been placed out of home by court order or by the Family Independence Agency, and the juvenile leaves such placement without authority, upon being apprehended the juvenile may be detained without the right to bail. Any detention must be authorized by the court.
>
> "(B) If a juvenile is placed in secure detention pursuant to this rule and no new petition is filed that would require a preliminary hearing pursuant to MCR 3.935, and no probation violation petition is filed, the court must conduct a detention hearing within 48 hours after the juvenile has been taken into custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2).
>
> "(C) At the detention hearing the court must:
>
> > (1) assure that the custodial parent, guardian, or legal custodian has been notified, if that person's whereabouts are known,
> >
> > (2) advise the juvenile of the right to be represented by an attorney,
> >
> > (3) determine whether the juvenile should be released or should continue to be detained."

Criminal offense. MCL 750.186a(1) makes it a felony for an individual who is placed in a juvenile facility to escape or attempt to escape from that juvenile facility or from the custody of an employee of that facility. "Escape" means to leave without lawful authority or to fail to return to custody when required. MCL 750.186a(2)(a). MCL 712A.18j(3) and MCL 803.306a(4) contain substantially similar definitions of "escape." A juvenile facility includes an institution operated as an agency of the county or court, and a state institution to which an offender has been committed for a misdemeanor or felony offense. MCL 750.186a(2)(b).

Notifying a victim of a juvenile's detention for a subsequent criminal offense. Upon the victim's written request, the court, Family Independence Agency, or county juvenile agency shall make a good faith effort to notify the victim when the juvenile is detained for committing a subsequent criminal offense. MCL 780.798(1)(d).

10.11 Supplemental Orders of Disposition

At any time while a juvenile is under the Family Division's jurisdiction, the court may terminate jurisdiction or amend or supplement a disposition order

"within the authority granted to the court in [MCL 712A.18]." MCL 712A.19(1). MCR 3.943(E)(2) requires the court to consider imposing "graduated sanctions" upon a juvenile when making second and subsequent dispositions in delinquency cases. That rule states as follows:

> (2) In making second and subsequent dispositions in delinquency cases, the court must consider imposing increasingly severe sanctions, which may include imposing additional conditions of probation; extending the term of probation; imposing additional costs; ordering a juvenile who has been residing at home into an out-of-home placement; ordering a more restrictive placement; ordering state wardship for a child who has not previously been a state ward; or any other conditions deemed appropriate by the court. Waiver of jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for purposes of this rule."

In *Breed v Jones,* 421 US 519, 531 (1975), the United States Supreme Court held that jeopardy attaches when a juvenile court assumes jurisdiction over a juvenile as a delinquent. Therefore, requiring waiver proceedings to occur before the adjudicatory phase of a delinquency proceeding is constitutionally required, and does not diminish the juvenile court's ability to create flexible remedies. *Id.,* at 535–41. See also *People v Saxton,* 118 Mich App 681, 688–89 (1982).

10.12 Restitution

The Michigan Constitution preserves the right of crime victims to restitution from their offenders. Const 1963, art 1, § 24, states in relevant part:

> "(1) Crime victims, as defined by law, shall have the following rights, as provided by law:
>
> . . . .
>
> The right to restitution."

Compensatory nature of restitution. Michigan courts have consistently stated that restitution is intended to compensate the victim rather than punish the defendant or juvenile. See, for example, *People v Grant,* 455 Mich 221, 230 n 10 (1997) (attempting to return the victim to his or her pre-offense state contrasts with the traditional purposes of criminal sentences—rehabilitation, deterrence, community protection, and punishment), *People v Law,* 459 Mich 419, 424 (1999) (the term "restitution" as used in the Crime Victim's Rights Act ("CVRA") has the same meaning as used in civil actions; therefore, prejudgment interest on restitution may be properly

ordered under the CVRA), and *People v Carroll,* 134 Mich App 445, 446 (1984) (the purpose of restitution is to compensate the injured party, not to force the defendant to disgorge the benefit gained from the offense). See, however, *Kelly v Robinson,* 479 US 36, 52–53 (1986) (for purposes of federal bankruptcy proceedings, there is no meaningful distinction between criminal fines and restitution).

Because restitution is the victim's constitutional right and is mandatory under the Crime Victim's Rights Act, the prosecutor and defendant or juvenile cannot exclude restitution from a plea or sentence agreement. *People v Ronowski,* 222 Mich App 58, 61 (1997).

The Michigan Supreme Court has held that because the nature of restitution is compensatory, not punitive, a restitution order survives the defendant's death and may be enforced against his or her estate. *People v Peters,* 449 Mich 515, 523–24 (1995).

A. Statutory Authority for Ordering Restitution

Restitution is authorized under MCL 780.794–780.795 (restitution under the juvenile article of the CVRA), and MCL 712A.30–712A.31 (restitution in cases under the Juvenile Code). Prior to 2001 amendments to the CVRA, the foregoing provisions were substantially similar to one another. The recent amendments to the CVRA added several rights and procedures to the restitution provisions of the CVRA. See 2000 PA 503, effective June 1, 2001. However, the restitution provisions contained in the other statutes listed above were not contemporaneously amended. To avoid confusion, the amended restitution provisions of the CVRA are discussed throughout this section, and the provisions contained in other law are discussed only when they contain additional rights or procedures not contained in the amended CVRA provisions.

A restitution order is governed by the statute in effect at the time of sentencing, not at the time of the offense. In *People v Lueth*, ___ Mich App ___ (2002), the Court of Appeals held that the trial court did not err by retrospectively applying an amended version of MCL 780.767(1), which was in effect at the time of sentencing but not at "the time of at least some of the crimes." The Court concluded that the amended statute, which deleted the requirement that a court consider a defendant's ability to pay before assessing the amount of restitution, could be applied retrospectively, since it "operate[d] in furtherance of a remedy already existing." *Id*. at ___. The Court found its holding to be "in accord with previous cases from this Court and our Supreme Court recognizing that a restitution order is governed by the statute in effect at the time of sentencing." *Id*. Finally, the Court rejected defendant's argument that the amended restitution statute violated the Ex Post Facto Clause of the Michigan Constitution, Const 1963, art 1, § 10, since the "amended language did not add an obligation to defendant's burden but instead removed consideration of what may have been used to reduce defendant's punishment." *Id*.

B. Claims for Restitution That Arise After Disposition or Sentencing

All articles of the CVRA require the court to order restitution "when sentencing a defendant" or "at the dispositional hearing or sentencing" of a juvenile. MCL 780.766(2), MCL 780.794(2), and MCL 780.826(2). However, the CVRA does not provide a time limit within which restitution claims must be made. Compare 18 USC 3664(d)(5) of the federal Victim and Witness Protection Act ("If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing").*

*The Michigan Supreme Court has referred to the VWPA when interpreting Michigan's restitution provisions. See, e.g., *People v Law,* 459 Mich 419, 425 (1999), and *People v Grant,* 455 Mich 221, 230 (1997).

If a juvenile has been placed on probation, the court has authority to alter or amend conditions of probation while the court has jurisdiction over the juvenile. MCL 712A.18*i*(2) (court has authority to alter or amend probation conditions when imposition of adult sentence has been delayed in a designated case), and MCL 712A.19(1) (court may amend or supplement disposition order at any time while it has jurisdiction over a juvenile in juvenile delinquency cases).

If a juvenile is committed to the Family Independence Agency following juvenile delinquency or "automatic waiver" proceedings, the court maintains jurisdiction over the juvenile. MCL 769.1(10) and MCL 712A.18c(2). However, no explicit statutory authority exists to amend the court's order of commitment to include restitution. See MCL 712A.18c(3) and MCL 769.1(11) (court may order changes in juvenile's placement or treatment plan based on an annual progress review).

The Michigan Court of Appeals has held that a sentencing court may *amend an existing order of restitution* after sentencing with regard to persons entitled to restitution and the amount of restitution owed. *People v Greenberg,* 176 Mich App 296, 311 (1989).

C. Offenses for Which Restitution Must Be Ordered

The CVRA requires restitution for any criminal offense. MCL 780.794(2) requires a court to order restitution at the disposition or sentencing hearing for an "offense." MCL 780.794(1)(a) defines "offense" as "a violation of a penal law of this state or a violation of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine."

The CVRA requires the person preparing a disposition report to notify victims of their right to submit information to the court regarding restitution in cases involving "serious misdemeanors." MCL 780.791(3)(c).* This notice requirement does not apply to other misdemeanors (e.g., malicious destruction of property of less than $1000.00, MCL 750.380(4)–(5).

*See Section 10.7, above, for discussion of these provisions.

Nonetheless, all crime victims have constitutional and statutory rights to restitution whether or not they receive notice of their right to submit information regarding the amount of their losses prior to disposition or sentencing.

D. Required Restitution When Ordering an Informal Disposition in a Juvenile Delinquency Case

Under MCL 780.786b(1), the court in a juvenile delinquency case must notify the prosecuting attorney of the court's intent to divert the case, place the case on the consent calendar, or use any other disposition that removes the case from the adjudicative process.* The prosecuting attorney, in turn, must notify the victim, who must be given the opportunity to address the court on the court's proposed action. If the court enters an order removing the case from the adjudicative process, "the court shall order the juvenile or the juvenile's parents to provide full restitution as provided in [MCL 780.794]." MCL 780.786b(1). See also MCL 780.794(2) (the court must order restitution under MCL 780.794 even though no dispositional hearing is held).

*See Section 4.3 for a detailed discussion of MCL 780.786b(1).

E. Persons or Entities Entitled to Restitution

In all cases, the court must order restitution to victims of the course of conduct that led to the defendant's or juvenile's conviction or adjudication, to individuals or entities (including insurance companies) that have compensated the victim for losses incurred due to that course of conduct, and to individuals or entities that have provided services to the victims of that course of conduct. The court must order restitution to be paid to the victim or the victim's estate first. However, if an individual or entity has compensated or will compensate the victim for losses resulting from the defendant's or juvenile's course of conduct, the court shall not order restitution to the victim and shall state on the record why it is not doing so. MCL 780.794(8) states in relevant part:

> "[A]n order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person or entity under that order is made. The court shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss, and the court shall state on the record with specificity the reasons for its action."

Any victim of the course of conduct that gave rise to the conviction or adjudication. In all cases, the court must order restitution to any victim of the course of conduct that gave rise to the defendant's or juvenile's conviction or disposition. MCL 780.794(2).

For purposes of restitution, "victim" is defined as an individual who suffers direct or threatened physical, financial, or emotional harm as a result of an offense, or a sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical or financial harm as a result of an offense. MCL 780.794(1)(b).

If the victim is deceased, the court shall order restitution to the victim's estate. MCL 780.794(7).

The offender may be ordered to pay restitution to victims of offenses for which the offender was not convicted or adjudicated. In *People v Gahan,* 456 Mich 264 (1997), the trial court ordered defendant to pay a total of $25,000.00 in restitution. Defendant was ordered to compensate more than 10 different victims whom he had defrauded in a similar fashion, even though he was only convicted of two counts of embezzlement. The Supreme Court unanimously affirmed, holding that the phrase "any victim of the defendant's course of conduct" should be given the broad meaning that was intended by the Legislature. The Court concluded that "the defendant should compensate for all the losses attributable to the illegal scheme that culminated in his conviction, even though some of the losses were not the factual foundation of the charge that resulted in conviction." *Id.* at 272. See also *People v Persails,* 192 Mich App 380, 383 (1991) (the defendant was properly ordered to pay restitution for uncharged offenses where a plea bargain was likely motivated by dismissal of those offenses), and compare *People v Winquest,* 115 Mich App 215, 221–22 (1982) (requiring the defendant to pay restitution related to an offense for which he was tried but acquitted was improper).

In *People v Letts,* 207 Mich App 479, 481 (1994), the defendant, who pled guilty to breaking and entering an occupied dwelling, was properly ordered to pay restitution for damage caused by a fire that was set by one of his accomplices after the defendant had left the dwelling. The defendant was neither charged with nor convicted of arson.

Expenses that are not reimbursable under the relevant statutes may not be included in a restitution order. See, e.g., *People v Jones,* 168 Mich App 191, 196 (1988) (the trial court erred in ordering restitution of the victim's traveling expenses).

The court may order restitution to a governmental agency for the loss of "buy money" resulting from drug offenses. "Narcotics Enforcement Teams" (NETs) may obtain restitution of "buy money" used to purchase controlled substances. *People v Crigler,* 244 Mich App 420, 427–28 (2001). In *Crigler,* the Court of Appeals first noted that the Crime Victim's Rights Act was amended in 1993 to provide that governmental entities could be victims under the act. The Court then concluded that loss of the "buy money" constituted "financial harm" resulting from an offense because loss of the money limited the NET's ability to conduct future investigations.*

*See also Section 10.9(K), above, for a provision allowing local governmental agencies to recover costs of emergency response resulting from an offense.

Individuals or entities that have compensated the victim. In addition to direct victims of the defendant's or juvenile's course of conduct, the court must order restitution to individuals or organizations that have compensated the direct victim for losses incurred as a result of that course of conduct. The relevant portion of MCL 780.794(8) states as follows:

> "The court shall order restitution to the crime victim services commission* or to any individuals, partnerships, corporations, associations, governmental entities, or other legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss."

*The Crime Victim Services Commission may reimburse crime victims for out-of-pocket expenses related to personal physical injuries suffered as a result of an offense. See Miller, *Crime Victim Rights Manual* (MJI, 2001), Chapter 11.

This provision allows the court to order restitution to insurance companies to the extent that they have compensated the victim for his or her loss. See *People v Washpun,* 175 Mich App 420, 423 (1989) (prior to the statutory amendment that added the section quoted above, the Legislature intended insurance companies to receive restitution under the CVRA to the extent that they compensated victims for losses arising from crimes).

Individuals or entities that have provided services to the victim. The court must also order restitution to individuals or organizations that have provided services to the victim as a result of the defendant's or juvenile's course of conduct. This includes victim services organizations. The relevant portion of MCL 780.794(8) states as follows:

> "The court shall also order restitution for the costs of services provided to persons or entities that have provided services to the victim as a result of the offense. Services that are subject to restitution under this subsection include, but are not limited to, shelter, food, clothing, and transportation."

F. Time Requirements for Making Restitution

Unless otherwise provided by the court, restitution must be made immediately. The court may require the defendant or juvenile to make restitution within a specified period or in specified installments. MCL 780.794(10). See also MCR 1.110 ("Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown").

G. Amount of Restitution Required

*The types of losses that are compensable are discussed in Sections 10.12(H) and (I), below.

"In determining the amount of restitution to order. . . , the court shall consider the amount of the loss sustained by any victim as a result of the offense." MCL 780.795(1).*

When determining the amount of restitution to order, the court must not consider a defendant's or juvenile's ability to pay the restitution. See 1996 PA 562 (eliminating the possibility that the court order partial restitution because of the offender's inability to pay full restitution). MCL 780.794(2) states that "at the dispositional hearing or sentencing for an offense, the court shall order, in addition to or in lieu of any other disposition or penalty authorized by law, that the juvenile make *full restitution* to any victim of the juvenile's course of conduct that gives rise to the disposition or conviction or to the victim's estate." (Emphasis added.)

Codefendants and coconspirators may be held jointly and severally liable for the entire amount of loss. *People v Peterson,* 62 Mich App 258, 267–68 (1975). In *People v Grant,* 455 Mich 221 (1997), defendant pleaded guilty to conspiracy to utter and publish and was ordered to pay $175,000.00 in restitution. Defendant appealed, arguing that he played a limited role in the conspiracy and should not be liable for the entire $175,000.00. The Michigan Supreme Court disagreed, reasoning that because each conspirator is criminally responsible for the acts of his co-conspirators committed in furtherance of the conspiracy, ordering the defendant to pay full restitution was justified. *Id.* at 236.

In an appropriate case, the amount of the victim's loss may include prejudgment interest. In *People v Law,* 459 Mich 419, 424 (1999), the Michigan Supreme Court held that where the defendant pled guilty to criminal desertion and abandonment, the trial court properly ordered interest on unpaid child support and medical bills under the CVRA. The Court also stated that the appropriate interest rate may be determined by reference to a "closely related statute" (the Support and Visitation Enforcement Act in this case); however, where there is no "closely related statute," the court has discretion to set a reasonable rate of interest. *Id.* at 429 n 12.

*See Section 10.12(T), below (required set off of amounts later recovered by victim).

Pending civil litigation between the victim and offender is an insufficient reason for ordering less than full restitution. The amount of restitution paid to the victim must be set off against any amount the victim recovers as compensatory damages in a civil suit against the defendant or juvenile. *People v Avignone,* 198 Mich App 419, 423 (1993).*

H. Calculating Restitution Where the Offense Results in Property Damage, Destruction, Loss, or Seizure

If an offense results in damage to or loss or destruction of a victim's property, or if it results in the seizure or impoundment of a victim's property, the court may order the juvenile to pay restitution to the victim.

The relevant statutory provisions, MCL 780.794(3)(a)–(c), determine the amount of restitution to be ordered in such cases. These provisions state that the court may order the juvenile to do one or more of the following:

> "(a) Return the property to the owner of the property or to a person designated by the owner.
>
> "(b) If return of the property under subdivision (a) is impossible, impractical, or inadequate, pay an amount equal to the greater of subparagraph (*i*) or (*ii*), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:
>
> > (*i*) The value of the property on the date of the damage, loss, or destruction.
> >
> > (ii) The value of the property on the date of disposition.
>
> "(c) Pay the costs of the seizure or impoundment, or both."

Thus, the court may order the juvenile to return the property to the victim or the victim's designee. If return of the property is impossible, impractical, or inadequate, the court may order the juvenile to pay the value of the property on the day it was damaged, lost, or destroyed (if the value of the property has depreciated or remained the same) or the value of the property at disposition (if the property has appreciated in value), less the value of any property returned to the victim. In addition, the court may order the juvenile to pay the costs of seizure, impoundment, or both.

In *People v Guajardo,* 213 Mich App 198, 199–200 (1995), the defendant was ordered to pay $28,105.00 in restitution for jewelry that he stole from a retail jewelry store. This amount, which was uncontroverted by any credible evidence, represented the retail value of the stolen jewelry. The Court of Appeals upheld the restitution order, finding that the victim lost the replacement value of the jewelry plus expected profit from its sale, and the victim's profit would have been used to pay operating expenses and employee wages.

I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

Expenses related to physical or psychological injury. If an offense results in physical or psychological injury to a victim, the court may order the juvenile to pay restitution for professional services and devices, physical and occupational therapy, lost income, medical and psychological treatment for the victim's family, and homemaking and child care expenses. MCL

780.794(4)(a)–(e) state that the court may order the juvenile to do one or more of the following, as applicable:

> "(a) Pay an amount equal to the reasonably determined cost of medical and related professional services and devices actually incurred and reasonably expected to be incurred relating to physical and psychological care.
>
> "(b) Pay an amount equal to the reasonably determined cost of physical and occupational therapy and rehabilitation actually incurred and reasonably expected to be incurred.
>
> "(c) Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense.
>
> "(d) Pay an amount equal to the reasonably determined cost of psychological and medical treatment for members of the victim's family actually incurred and reasonably expected to be incurred as a result of the offense.
>
> "(e) Pay an amount equal to the reasonably determined costs of homemaking and child care expenses actually incurred and reasonably expected to be incurred as a result of the offense or, if homemaking or child care is provided without compensation by a relative, friend, or any other person, an amount equal to the costs that would reasonably be incurred as a result of the offense for that homemaking and child care, based on the rates in the area for comparable services."

*See Sections 10.12(B) and (Q) for discussion of amending restitution orders.

The amount of restitution for professional services and devices, physical and occupational therapy, medical and psychological treatment for the victim's family, and homemaking and child care expenses must be reasonably determined and include both expenses actually incurred and reasonably expected to be incurred. Thus, "prospective" restitution may be ordered.*

MCL 780.794(4)(c) allows the court to order a juvenile to "[r]eimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense." The Court of Appeals has held that the court may not order restitution for lost income of a homicide victim's family member under a similar provision applicable to adult felony offenses. *People v Paquette,* 214 Mich App 336, 346 (1995). The Court of Appeals in *Paquette* noted that MCL 780.766(4)(c) does not explicitly include the direct victim's family members, and that for purposes of restitution, "victim" includes only those individuals who have suffered direct or threatened harm. *Id.*

Expenses related to the victim's death. If criminal conduct results in the death of a victim, the court must order the restitution to be paid to the victim's estate. MCL 780.794(7).

The court may order restitution in "an amount equal to the cost of actual funeral and related services." MCL 780.794(4)(f). Where the defendant failed to show that the $11,864.22 in restitution ordered by the sentencing court for funeral and burial expenses included an $11,000.00 reward paid by the victim's family, the Court of Appeals found no error in the restitution order. *People v Ho,* 231 Mich App 178, 192 (1998).

The court may also order a juvenile to reimburse a victim's parent or guardian for a lost tax deduction or credit. MCL 780.794(4)(g) states:

> "If the deceased victim could be claimed as a dependent by his or her parent or guardian on the parent's or guardian's federal, state, or local income tax returns, pay an amount equal to the loss of the tax deduction or tax credit. The amount of reimbursement shall be estimated for each year the victim could reasonably be claimed as a dependent."

Triple restitution for serious bodily impairment or death of a victim. If an offense causing bodily injury to the victim also results in the serious impairment of a body function or the death of that victim, the court may order up to three times the amount of restitution otherwise allowed under the CVRA. MCL 780.794(5). "Serious impairment of a body function" includes but is not limited to the following:

> "(a) Loss of a limb or use of a limb.
>
> "(b) Loss of a hand or foot or use of a hand or foot.
>
> "(c) Loss of an eye or use of an eye or ear.
>
> "(d) Loss or substantial impairment of a bodily function.
>
> "(e) Serious visible disfigurement.
>
> "(f) A comatose state that lasts for more than 3 days.
>
> "(g) Measurable brain damage or mental impairment.
>
> "(h) A skull fracture or other serious bone fracture.
>
> "(i) Subdural hemorrhage or subdural hematoma.
>
> "(j) Loss of a body organ." MCL 780.794(5)(a)–(j).

Michigan's "no-fault" automobile insurance act provides that an injured person may recover non-economic ("pain and suffering") tort damages from a driver if the person suffers "serious impairment of a body function." MCL 500.3135(7) defines "serious impairment of a body function" as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." "Objectively manifested" means that the injury or condition must be medically identifiable and have a physical basis but it need not be permanent. *DiFranco v Picard,* 427 Mich 32, 74 (1986), and M Civ JI 36.11. Important body functions include walking, movement of the back, neck, or hands, and heart and lung function. See M Civ JI 36.11, Comment, for case citations. The Court of Appeals has stated that trial courts should consider the following nonexhaustive list of factors when deciding whether an impairment is serious for purposes of the no-fault act: "extent of the injury, treatment required, duration of disability, and extent of residual impairment and prognosis for eventual recovery." *Kern v Blethen-Coluni,* 240 Mich App 333, 341 (2000).

Mental or emotional injuries may qualify as impairments of body functions. M Civ JI 36.02 states:

> "The operation of the mind and of the nervous system are body functions. Mental or emotional injury which is caused by physical injury or mental or emotional injury not caused by physical injury but which results in physical symptoms may be a serious impairment of . . . body function."

J. Required Reports by Probation Officers

The court may order a probation officer to obtain information pertaining to the amount of loss suffered by a victim. If the court orders a probation officer to obtain such information, he or she must include this information in a disposition report or a separate report, as the court directs. MCL 780.795(1)–(2).

The court must disclose to the juvenile, the juvenile's supervisory parent, and the prosecuting attorney all portions of the disposition or other report pertaining to the amount of loss. MCL 780.795(3). See also MCL 771.14(3) (information in a PSIR must be disclosed to the parties).

K. Hearing Requirements and Burden of Proof

When ordering a defendant or juvenile to pay restitution, the court is not required to hold a hearing to determine the type or amount of restitution.* "Only an actual dispute, properly raised at the sentencing hearing in respect to the type or amount of restitution, triggers the need to resolve the dispute by a preponderance of the evidence." *People v Grant,* 455 Mich 221, 243 (1997). A trial judge is entitled to rely on the information in a presentence report, which is presumed to be accurate unless the defendant effectively challenges that information. *Id.* at 233–34. If an evidentiary hearing is held, the rules of evidence do not apply, other than those with respect to privileges. MRE 1101(b)(3).

*However, a hearing is required before ordering a juvenile's parent to pay restitution. See Section 10.12(L), below.

MCL 780.795(4) states that "[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney." The prosecuting attorney must show "with some precision" the amount of loss resulting from uncharged offenses related to the conviction offense, and a defendant is entitled to decline to testify at a hearing to determine the proper amount of restitution without having that silence used against him or her. *People v Alvarado,* 142 Mich App 151, 164–65 (1984), overruled on other grounds 428 Mich 356, 363 n 7 (1987). The burden of demonstrating the financial resources of a juvenile's supervisory parent and any other moral or legal financial obligation of the parent shall be on the supervisory parent. MCL 780.795(4).

The amount of loss for which restitution is ordered must be based on evidence. *People v Guajardo,* 213 Mich App 198, 200 (1995). The amount of loss may be shown by facts in a presentence report, in a victim impact statement, or adduced at sentencing. *People v Hart,* 211 Mich App 703, 706 (1995) (the amount of loss was adequately shown by the presentence report and victim impact statement), *People v Sickles,* 162 Mich App 344, 363–65 (1987) (the amount embezzled by the defendant was adequately shown by the presentence report and a consent judgment in a related civil suit), *People v Tyler,* 188 Mich App 83, 87 (1991) (where the presentence report was not included in the record on appeal, there was no means of determining whether the trial court arbitrarily ordered an amount of restitution to the victim of a sexual assault), and *People v White,* 212 Mich App 298, 316 (1995) (where the stalking victim's statement that her financial losses "equaled hundreds or thousands of dollars" was unsubstantiated by other evidence, remand to the trial court for an evidentiary hearing was necessary).

> **Note:** If a qualified "victim-offender reconciliation program" or "victim-offender mediation program" is available, and if victim participation in the program is completely voluntary, the amount of restitution may be established by the victim and offender rather than the court.

L. Hearings on Restitution Payable by Juvenile's Parent

*There is no authority to order a parent to pay restitution in "automatic waiver" cases.

In juvenile delinquency cases, "traditional" waiver cases, and designated cases, the court may order the juvenile's parent to pay some or all of the restitution owed to the victim. MCL 780.794(15) and MCL 780.766(15)(a).* The juvenile's parent must be given an opportunity to be heard on the issue. The relevant statutory provisions state:

> "If the court determines that a juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent or parents and an opportunity for the parent or parents to be heard the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding. An order under this subsection does not relieve the juvenile of his or her obligation to pay restitution as ordered, but the amount owed by the juvenile shall be offset by any amount paid by his or her parent. As used in this subsection, 'parent' does not include a foster parent." MCL 780.766(15) and MCL 780.794(15).

Note: If a victim of the juvenile's offense is the juvenile's parent, the court may choose not to order that parent to pay restitution under these provisions.

The court must "take into account the parent's financial resources and the burden that the payment of restitution will impose, with due regard to any other moral or legal financial obligations the parent may have." MCL 780.766(16) and MCL 780.794(16). If a parent is required to pay restitution, the court must order payment to be made in specified installments *and* within a specified period of time. *Id* (emphasis added). When the juvenile is ordered to pay restitution in delinquency proceedings, the court may order payment in specified installments *or* within a specified period of time. MCL 780.794(10).

An order directed to a parent shall not be binding unless the parent has been given an opportunity for a hearing pursuant to the issuance of a summons or notice as provided in MCL 712A.12 and MCL 712A.13. MCL 712A.18(4). The order, bearing the seal of the court, must be served on the parent or other person as required by MCL 712A.13. *Id.*

A parent who has been ordered to pay restitution may petition the court for a modification of the amount of restitution owed by that parent or for a cancellation of any unpaid portion of that parent's obligation. The court must "cancel all or part of the parent's obligation due if the court determines that payment of the amount due will impose a manifest hardship on the parent and if the court also determines that modifying the method of

payment will not impose a manifest hardship on the victim." MCL 780.766(17) and MCL 780.794(17).

M. Orders for Services by Juvenile in Lieu of Money

"If the victim or victim's estate consents, the order of restitution may require that the juvenile make restitution in services in lieu of money." MCL 780.794(6).

N. Restitution Ordered As a Condition of Probation

If a juvenile is placed on probation, any restitution ordered by the court must be a condition of that probation. MCL 780.794(11).

Community service or employment. Where restitution is imposed as a condition of probation, the court must also order either community service or employment as a condition of probation. MCL 712A.18(8)(a)–(b) state as follows:

> "If the court imposes restitution as a condition of probation, the court shall require the juvenile to do either of the following as an additional condition of probation:
>
> > (a) Engage in community service or, with the victim's consent, perform services for the victim.
> >
> > (b) Seek and maintain paid employment and pay restitution to the victim from the earnings of that employment."

Wage assignment by employed defendant or juvenile as a condition of probation. As a condition of probation, the court may order any employed juvenile to execute a wage assignment to pay the restitution ordered by the court. MCL 780.794(18). See also MCL 771.3(2)(f), which authorizes wage assignments in criminal cases when probation is ordered.

Review of restitution as a condition of probation. MCL 780.794(18) provides that in each case in which payment of restitution is ordered as a condition of probation, the probation officer or caseworker assigned to the case shall review the case not less than twice yearly to ensure that restitution is being paid as ordered. If the restitution was ordered to be paid within a specified period of time, the probation officer or caseworker must review the case at the end of the specified period of time to determine whether the restitution has been paid. A final review of restitution payment must be conducted not less than 60 days before the expiration of the probationary period. *Id.*

*See SCAO Form MC 258 for the required form to report arrearages. The provision allowing the probation officer or caseworker to petition for a probation violation is effective June 1, 2001.

If the probation officer or caseworker determines at any of these required reviews that restitution is not being paid as ordered, he or she must file a written report of the violation with the court on a form prescribed by the State Court Administrative Office or petition the court for a probation violation. *Id.** The report or petition must include a statement of the amount of the arrearage and any reasons for the arrearage that are known by the probation officer or caseworker. The probation officer or caseworker must immediately provide a copy of the report or petition alleging a probation violation to the prosecuting attorney. If a petition or motion for probation violation is filed or other proceedings are initiated to enforce payment of restitution and the court determines that restitution is not being paid or has not been paid as ordered by the court, the court shall promptly take action necessary to compel compliance. *Id.*

*See Sections 10.12(O) (revocation of probation), 10.12(Q) (modifying the method of payment), and 10.12(R) (enforcing restitution orders).

If the court determines that restitution is not being paid or has not been paid as ordered, the court may revoke probation or modify the method of payment. In addition, the prosecuting attorney or a person named in the restitution order may begin proceedings to enforce the restitution order.*

O. Revocation of Probation for Failure to Comply With Restitution Order

*See, however, MCR 6.931(F)(10), which prohibits the court in "automatic waiver" cases from revoking probation and committing the juvenile to the Department of Corrections for failing to pay restitution.

A court may revoke probation if the juvenile fails to comply with the restitution order and has not made a good-faith effort to comply with the order. MCL 780.794(11).* The court must consider "the juvenile's employment status, earning ability, and financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay." *Id.*

MCL 780.794(14) states that "a juvenile shall not be detained or imprisoned for a violation of probation or parole or otherwise for failure to pay restitution as ordered under this section unless the court determines that the juvenile has the resources to pay the ordered restitution and has not made a good-faith effort to do so." MCL 712A.18(9) authorizes the court to revoke probation if the juvenile intentionally refuses to perform required community service.

The required findings in the foregoing statutes are necessary to avoid an equal protection violation when a defendant or juvenile is incarcerated for failing to pay restitution. A sentence that exposes an indigent offender to incarceration unless he or she pays restitution violates the Equal Protection Clauses of the state and federal constitutions because it results in unequal punishments based on ability to pay the restitution. *Tate v Short,* 401 US 395, 397–400 (1971), and *People v Baker,* 120 Mich App 89, 99 (1982). In *People v Collins,* 239 Mich App 125 (1999), the trial court sentenced defendant to 48 months of probation, including a year in jail. The sentence provided that 270 days of the jail time would be suspended if defendant paid

$31,505.50 in restitution. Defendant sought a hearing on his ability to pay the restitution, but the trial court denied defendant's request. The trial court reasoned that defendant was not being jailed for failing to pay restitution; instead, he was being denied a suspension of the sentence for failing to meet a condition of the suspension. The Court of Appeals rejected the trial court's distinction. *Id.* at 133. Defendant could not be required to serve the suspended portion of the sentence without findings by the trial court that defendant had the ability to pay the restitution and had wilfully defaulted. *Id.* at 136. The Court of Appeals remanded the case to the trial court for findings on these issues.

P. Payment of Restitution When Individual Is Remanded to Department of Corrections

MCL 780.794(19) states that if "an individual who is ordered to pay restitution under this section is remanded to the jurisdiction of the department of corrections, the court shall provide a copy of the order of restitution to the department of corrections when the court determines that the individual is remanded to the department's jurisdiction."

If a prisoner has been ordered to pay restitution to a crime victim and the court has sent the Department of Corrections a copy of the order of restitution, the Department of Corrections "shall deduct 50% of the funds received by the prisoner in a month over $50.00 for payment of restitution." MCL 791.220h(1). The Department of Corrections must promptly forward to the victim restitution received when the amount received exceeds $100.00, or the entire amount received when the prisoner is paroled, transferred to a community program, or discharged on the maximum sentence. *Id.* The Department of Corrections must not alter these requirements through an agreement with the prisoner. MCL 791.220h(3).

> **Note:** Prisoners may object to the deduction of money from their accounts under MCL 791.220h(1), on grounds that the money was not given to them but sent to them by family members for a prisoner's use. However, the statute requires the Department of Corrections to deduct "funds received by the prisoner" and does not require the prisoner to "own" the money.

In *White-Bey v Dep't of Corrections,* 239 Mich App 221 (1999), the trial court recommended that the plaintiff-prisoner pay the victim $140.00 in restitution as a condition of parole or discharge. While plaintiff-prisoner was still in prison, the defendant-Department of Corrections began to remove funds from plaintiff-prisoner's account to satisfy the restitution order, and plaintiff-prisoner sought an injunctive order. The Court of Appeals upheld the removal of plaintiff-prisoner's funds to pay the restitution. The Court of Appeals relied in part on the CVRA although the plaintiff-prisoner's offense was committed before the CVRA was enacted. Under the version of MCL 780.766 in effect on the date of plaintiff-prisoner's sentencing, restitution was payable immediately unless the

sentencing court ordered it payable within a specified period or in installments. Because there was no language in the judgment of sentence providing for payment within a specified period or in installments, restitution was payable immediately. Moreover, the sentencing court did not have authority to order a condition of parole because the Department of Corrections has exclusive jurisdiction over paroles. Thus, the portion of the judgment of sentence that conditioned parole or discharge upon payment of restitution could not be relied upon to prevent the Department of Corrections from removing funds from the plaintiff-prisoner's account.

Q. Modification of Method of Payment of Restitution

Pursuant to the CVRA, a court may modify the method of payment of restitution imposed on a defendant or juvenile. MCL 780.794(12) states as follows:

> "A juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment."

At any time while a juvenile is under the Family Division's jurisdiction, the court may amend or supplement a disposition order "within the authority granted to the court in [MCL 712A.18]." MCL 712A.19(1). MCL 712A.18(7) requires the court to order restitution pursuant to the CVRA and MCL 712A.30, and MCL 712A.30(12) allows the court to modify the method of payment of restitution. In criminal cases, the court has authority to alter and amend conditions of probation. MCL 771.2(2). Indeed, upon petition by the probationer, the court should conduct a hearing to determine whether the probation order should be modified. *People v Ford,* 95 Mich App 608, 612 (1980), rev'd on other grounds 410 Mich 902 (revocation of probation was proper for failure to pay child support and costs where the defendant failed to petition the court for modification of his probation conditions), and *People v Lemon,* 80 Mich App 737, 743 (1978) (sentencing court abused its discretion by refusing to modify the restitution condition of the probation order where the defendant petitioned for modification of the order).

The CVRA gives the court authority to modify *or cancel* the amount of restitution owed by a juvenile's parent. MCL 780.794(17) and MCL 780.766(17). The CVRA does not contain a provision authorizing a court to modify or cancel the amount owed by a defendant or juvenile. See MCL 780.794(13) (restitution orders remain in effect until they are satisfied in full).*

*See Section 10.12(L), above (orders of restitution directed to parents of juveniles) and 10.12(R), below (enforcement of restitution orders).

R. Enforcement of Restitution Orders

MCL 780.794(13) states:

> "An order of restitution entered under this section remains effective until it is satisfied in full. An order of restitution is a judgment and lien against all property of the individual ordered to pay restitution for the amount specified in the order of restitution. The lien may be recorded as provided by law. An order of restitution may be enforced by the prosecuting attorney, a victim, a victim's estate, or any other person or entity named in the order to receive the restitution in the same manner as a judgment in a civil action or a lien."

Because an order of restitution may be enforced against a juvenile's parent, MCL 780.794(13) provides that the restitution order is a lien against "all property of the individual ordered to pay restitution."

A restitution order may be payable immediately, within a specified period, or in installments. MCL 780.794(10). There are no statutory time limits on payment of restitution. See 1996 PA 562 (eliminating requirements that restitution payments coincide with probation or parole periods) and *United States v Rostoff,* 956 F Supp 38, 43–44 (D Mass, 1997) (restitution orders under the federal Victim and Witness Protection Act are not time limited).*

*The Michigan Supreme Court has referred to the VWPA when interpreting Michigan's restitution provisions. See, e.g., *People v Law,* 459 Mich 419, 425 (1999), and *People v Grant,* 455 Mich 221, 230 (1997).

Proceedings to enforce a restitution order. A person entitled to restitution cannot seek to enforce a restitution order in the same manner as a civil judgment until the person ordered to pay restitution fails to comply with the order. When the defendant or juvenile fails to comply with the order, proceedings to enforce the restitution order, which is a judgment against the person(s) ordered to pay, may be instituted. In such cases, the restitution order is enforced in the same manner as a civil judgment, not by filing a new civil action. *Indesco Products, Inc v Novak,* 735 NE 2d 1082, 1085–86 (Ill App Ct, 2000).

> **Note:** A detailed discussion of the enforcement of civil judgments is beyond the scope of this manual. See MCR 2.621 and the statutes cited therein.

*The Michigan Supreme Court has referred to the VWPA when interpreting Michigan's restitution provisions. See, e.g., *People v Law,* 459 Mich 419, 425 (1999), and *People v Grant,* 455 Mich 221, 230 (1997).

In *Lyndonville Savings Bank & Trust Co v Lussier,* 211 F3d 697 (CA 2, 2000), a federal appellate court construed language in the federal Victim and Witness Protection Act similar to that in Michigan's CVRA that allowed for enforcement of a restitution order "in the same manner as a judgment in a civil action."* The Court held that the beneficiary of a restitution order cannot immediately seek a separate civil judgment to modify the payment terms of the restitution order, nor must the beneficiary of a restitution order seek a separate civil judgment before enforcing the restitution order. *Id.* at 702–04. The Court stated that the "statutory right to enforcement is part of the criminal sentencing process and may not be read to create a separate and independent civil cause of action . . . ." *Id.* at 699.

In all cases under the CVRA, the court must not impose a fee on a victim, victim's estate, or prosecuting attorney for enforcing a restitution order. MCL 780.794(20).

Restitution order is not dischargeable in a bankruptcy proceeding. The United States Supreme Court has held that a restitution order is not dischargeable in bankruptcy proceedings. *Kelly v Robinson,* 479 US 36, 50 (1986). Under 11 USC 523(a)(7), any debt "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and [which] is not compensation for actual pecuniary loss . . ." is not dischargeable. The Court in *Kelly* noted that state criminal judgments—including restitution orders—have historically not been dischargeable in bankruptcy proceedings. *Kelly, supra,* at 44–48. The Court also noted that allowing discharge of restitution orders would compel state prosecuting attorneys to defend such orders in federal court. *Id.* at 48–49. The Court then stated its holding broadly: ". . . we hold that §523(a)(7) preserves from discharge any condition a state criminal court imposes as part of a criminal sentence."

*See Section 10.12(G), above, (determining the amount of restitution to order under Michigan law). The Michigan Supreme Court has stated that restitution under Michigan's CVRA is compensatory in nature, not punitive. See Section 10.12, above.

As stated above, 11 USC 523(a)(7), excepts from discharge any debt "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and [which] is not compensation for actual pecuniary loss . . . ." Although Michigan's restitution provisions require the sentencing court to order restitution for pecuniary losses suffered by victims,* the United States Supreme Court in *Kelly, supra,* at 51–52, stated that for purposes of bankruptcy proceedings there is no meaningful distinction between criminal fines and restitution:

> "On its face, [11 USC 523(a)(7)] creates a broad exception for all penal sanctions, whether they be denominated fines, penalties, or forfeitures. Congress included two qualifying phrases; the fines must be both 'to and for the benefit of a governmental unit,' and 'not compensation for actual pecuniary loss.' Section 523(a)(7) protects traditional criminal fines; it codifies the judicially created exception to discharge for fines. We must decide whether the result is altered by the two major differences between restitution and a traditional

> fine. Unlike traditional fines, restitution is forwarded to the victim, and may be calculated by reference to the amount of harm the offender has caused.
>
> In our view, neither of the qualifying clauses of §523(a)(7) allows the discharge of a criminal judgment that takes the form of restitution. The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment 'for the benefit of' the victim, the context in which it is imposed undermines that conclusion."

S. No Remission of Restitution When Conviction or Adjudication Is Set Aside

If a juvenile or defendant successfully moves to set aside his or her adjudication or conviction, the juvenile or defendant "is not entitled to the remission of any fine, costs, or other sums of money paid as a consequence of an adjudication [or conviction] that is set aside," including restitution. MCL 712A.18e(11)(a) and MCL 780.622(2).*

*See Sections 25.16–25.17 for discussion of setting aside an adjudication or conviction.

T. Required Set Offs for Damages or Compensation Received by Victims

If the victim recovers compensatory damages in a civil suit resulting from the offense, the amount of compensatory damages must be reduced by the amount of restitution received by the victim. In addition, an award of compensation from the Crime Victim Services Commission* must be reduced by the amount of restitution received by the victim. MCL 780.794(9) state as follows:

> "Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim services commission made after an order of restitution under this section."

*The Crime Victim Services Commission may reimburse crime victims for out-of-pocket expenses related to personal physical injuries suffered as a result of an offense. See Miller, *Crime Victim Rights Manual* (MJI, 2001), Chapter 11.

U. Unclaimed Restitution

If they are not claimed within two years after being ordered, restitution payments must be deposited in the "crime victim's rights fund" via the court's monthly transmittal. MCL 780.794(21).*

*See Section 10.13, below, for further discussion.

10.13 Crime Victim's Rights Fund Assessment

When a defendant or juvenile offender is convicted or adjudicated of an enumerated offense, the trial court must order the defendant or juvenile to pay a "crime victim's rights fund assessment." This assessment is discussed in Sections 10.13(A), below. The court clerk must report monthly on the assessments collected and transmit the money to the Department of Treasury to fund crime victim services. See Section 10.13(C), below. In some circumstances, unclaimed restitution payments may be deposited in the "crime victim rights fund." See Section 10.13(D), below.

A. Assessments of Convicted and Adjudicated Offenders

The court must order a "crime victim's rights fund assessment" against each convicted defendant or adjudicated juvenile offender as follows:

- Each defendant convicted of a felony must pay an assessment of $60.00, MCL 780.905(1).
- Each person convicted of a "serious misdemeanor" or "specified misdemeanor" must pay an assessment of $50.00, MCL 780.905(1).
- Each juvenile for whom an order of disposition is entered for a "juvenile offense" must pay an assessment of $20.00, MCL 780.905(2).
- Each juvenile against whom a conviction is entered following designated case proceedings must be ordered to pay the assessment under the rules governing adults. MCL 712A.18(12) and MCL 780.901(f).

The court may only order one "crime victim's rights fund assessment" per criminal or juvenile delinquency case. MCL 780.905(1) and (2). "If the court enters an order pursuant to the Crime Victim's Rights Act, MCL 780.751, et seq., the court shall only order the payment of one assessment at any dispositional hearing, regardless of the number of offenses." MCR 3.943(E)(5).

"Fines, costs, and other financial obligations imposed by the court must be paid at the time of assessment, except when the court allows otherwise, for good cause shown." MCR 1.110.

B. Felony, "Serious Misdemeanor," "Specified Misdemeanor," and "Juvenile Offense" Defined

For purposes of the "crime victim's rights fund assessment," a felony is an offense punishable by imprisonment for more than one year, or an offense expressly designated by law as a felony. MCL 780.901(d).

"Serious misdemeanors" are listed in MCL 780.811(1)(a). MCL 780.901(g). They are:

- assault and battery, MCL 750.81;
- aggravated assault, MCL 750.81a;
- breaking and entering or illegal entry, MCL 750.115;
- fourth-degree child abuse, MCL 750.136b(6);
- enticing a child for an immoral purpose, MCL 750.145a;
- discharge of a firearm intentionally aimed at a person, MCL 750.234;
- discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235;
- indecent exposure, MCL 750.335a;
- stalking, MCL 750.411h(2)(a);
- leaving the scene of a personal-injury accident, MCL 257.617a;
- operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual;
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701, if the violation results in physical injury or death to any individual;
- operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3), if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual;
- a violation of a local ordinance substantially corresponding to a violation listed above; and
- A charged felony or serious misdemeanor that is subsequently reduced or pled to a misdemeanor.

"Specified misdemeanors" are listed in MCL 780.901(h). They are misdemeanor violations of any of the following:

- fleeing and eluding a police or conservation officer, MCL 257.602a;*

*All violations of MCL 257.602a are felonies.

- driving while intoxicated or visibly impaired, MCL 257.625(1) or (3);
- reckless driving, MCL 257.626;
- driving without a valid license, MCL 257.904;
- operating a snowmobile while intoxicated or visibly impaired, MCL 324.82127(1) or (3);
- operating an off-road vehicle while intoxicated, MCL 324.81134(1) or (2);
- operating an off-road vehicle while visibly impaired, MCL 324.81135;
- operating a vessel while intoxicated or visibly impaired, MCL 324.80176(1) or (3);
- operating an aircraft while under the influence of intoxicating liquor or controlled substance, MCL 259.185;
- controlled substance violations, MCL 333.7401 to 333.7461 and 333.17766a;
- selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701;
- operating a locomotive while under the influence of intoxicating liquor or controlled substance, MCL 462.353;
- operating a locomotive while visibly impaired, MCL 462.355;
- embezzlement, MCL 750.174;
- false pretenses, MCL 750.218;
- larceny, MCL 750.356;
- second-degree retail fraud, MCL 750.356d;
- larceny from a vacant dwelling, MCL 750.359;
- larceny by conversion or embezzlement, MCL 750.362;
- larceny of a rented vehicle, MCL 750.362a;
- malicious destruction of personal property, MCL 750.377a;
- malicious destruction of a building, MCL 750.380;
- fleeing and eluding a police or conservation officer, MCL 750.479a(6);

- receiving or concealing stolen, embezzled, or converted property, MCL 750.535;
- malicious use of telephone, MCL 750.540e; and
- a local ordinance substantially corresponding to a violation listed above.

For purposes of the "crime victim's rights fund assessment," a "juvenile offense" is defined as an offense that if committed by an adult would be a felony, "serious misdemeanor," or "specified misdemeanor." MCL 780.901(f).

In a criminal case, payment of the "crime victim's rights fund assessment" must be a condition of probation or parole. MCL 780.905(1), MCL 771.3(1)(f), and MCL 791.236(7). In a juvenile delinquency case, the court must order payment of the assessment in its order of disposition. MCL 712A.18(12).

If a criminal defendant who is ordered to pay an assessment posted a cash bond or bail deposit, the court must order the "crime victim's rights fund assessment" collected out of the bond or bail. MCL 780.905(4). However, if the defendant is subject to a combination of fines, costs, restitution, assessments, or other payments, the cash bond or bail must be distributed as described in Section 10.14, below. MCL 780.905(4) and (5).

C. Duties of the Court Clerk

MCL 780.905(6) prescribes duties for the clerk of the court regarding "crime victim's rights fund assessments." On the last day of each month, the clerk must transmit 90% of the assessments collected to the Department of Treasury; the clerk may retain 10% of the assessments collected to defray administrative costs and to provide crime victim rights services. MCL 780.905(6)(a). In addition, the clerk must transmit a monthly report to the Department of Community Health that contains the following information:

- the name of the court;
- the total number of criminal convictions or juvenile dispositions;
- the total number of defendants or juveniles against whom an assessment was imposed by that court;
- the total amount of assessments imposed by that court;
- the total amount of assessments collected by that court; and
- other information required by the Department of Community Health. MCL 780.905(6)(b).

The money collected from the assessments is deposited in the "crime victim's rights fund" and is used to fund crime victim rights services and, in some circumstances, crime victim compensation. MCL 780.904 and MCL 780.905(3).

D. Depositing Unclaimed Restitution in the "Crime Victim's Rights Fund"

If they are not claimed within two years of being ordered, restitution payments may be deposited in the "crime victim's rights fund." However, a person or entity entitled to the restitution payments may claim the money at any time after it has been deposited in the fund. If this occurs, the Crime Victim Services Commission must reimburse the court in the amount of the claimed restitution. The relevant provisions state as follows:

> "If a person or entity entitled to restitution cannot be located or refuses to claim that restitution within 2 years after the date on which he or she could have claimed the restitution, the restitution paid to that person or entity shall be deposited in the crime victim's rights fund created under . . . MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court's revenue transmittal to the crime victim rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity." MCL 780.794(21).

10.14 Allocation of Fines, Costs, Restitution, Fees, Assessments, and Other Payments

A defendant, juvenile, and parent or guardian may be ordered to pay court costs, penal fines, probation or parole supervision fees, and other payments or assessments. Typically, the defendant, juvenile, and parent or guardian make incremental payments to the trial court rather than paying all of the restitution, costs, fines, fees, and assessments at once. When the trial court receives a payment from the defendant, juvenile, and parent or guardian, the court must allocate the money pursuant to statute. The allocation of all monies received from the defendant, juvenile, and parent or guardian is discussed below.

MCL 600.1475 requires a court to pay back with interest amounts collected if the judgment under which collection is made is later reversed. The Court

of Appeals has held that a trial court acts "as a conduit in channeling [a] defendant's restitution payments to the victim" and therefore has no statutory duty to refund such payments to a defendant if the order of restitution is reversed. *People v Diermier,* 209 Mich App 449, 451 (1995). A defendant, juvenile, or juvenile's parent could seek restitution from a victim of the amount paid if the judgment were later reversed, however. See *Moore v Baugh,* 106 Mich App 815, 819 (1981) (when a judgment is reversed, the party who received any benefit under the judgment must restore that benefit to the other party).

MCL 780.905(5) states that "[i]f a person is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal or juvenile proceeding," the money collected from that person must be distributed as required by MCL 775.22 (criminal cases), and MCL 712A.29 (juvenile delinquency cases). See also MCL 712A.29(1) (money collected from a juvenile's parents must be distributed according to MCL 712A.29). A recent amendment to the CVRA added provisions to all three articles of the CVRA for allocating payments that mirror those contained in MCL 775.22. See MCL 780.794a.

Criminal cases. Under MCL 775.22 and MCL 780.794a, each payment by the defendant or juvenile for victim payments, fines, costs, assessments, probation or parole supervision fees, or other payments must be allocated as follows:

- Fifty percent must be applied to victim payments. MCL 775.22(2) and MCL 780.794a(2). "Victim payments" mean restitution ordered to be paid to the victim or victim's estate but not to an individual or entity that has reimbursed a victim for losses arising from the offense, and assessments paid to the Crime Victim's Rights Fund. MCL 775.22(5) and MCL 780.794a(5).
- For violations of state law, the remaining money must be applied in the following descending order of priority:
  - — costs;
  - — fines;
  - — probation or parole supervision fees;
  - — assessments (other than the "crime victim's rights assessment") and other payments. MCL 775.22(3) and MCL 780.794a(3). "Other payments" include payments to individuals or entities that have reimbursed a victim for losses arising from the offense. MCL 780.794a(3)(d).

- For violations of local ordinances, the remaining money collected must be applied in the following descending order of priority:

  — payment of fines and costs;

  — payment of assessments (other than the "crime victim's rights assessment") and other payments. MCL 775.22(4) and MCL 780.794a(4).

If any victim payments remain unpaid after all of the other fees have been paid, then all of the remaining money collected shall be applied to victim payments. Conversely, if all of the victim payments have been made, then all of the remaining money collected shall be applied to the other fees in the order of priority listed above. MCL 775.22(2) and MCL 780.794a(2).

Juvenile delinquency cases. Under MCL 712A.29, each payment made by a juvenile or his or her parents for victim payments, fines, costs, assessments, or other assessments or payments must be allocated as follows:

- Fifty percent of the money must be applied to victim payments. MCL 712A.29(2). "Victim payments" mean restitution ordered to be paid to the victim or victim's estate but not to an individual or entity that has reimbursed a victim for losses arising from the offense, and assessments paid to the Crime Victim's Rights Fund. MCL 712A.29(7).

- In cases involving orders of disposition for offenses that would be violations of state law if committed by an adult, the remaining money must be applied in the following descending order of priority:

  — payment of costs;

  — payment of fines;

  — payment of assessments (other than the "crime victim's rights assessment") and other payments. MCL 712A.29(3).

- In cases involving orders of disposition for offenses that would be violations of local ordinances if committed by an adult, the remaining money must be applied in the following descending order of priority:

  — payment of fines and costs;

  — payment of assessments (other than the "crime victim's rights assessment") and other payments. MCL 712A.29(4).

If fines, costs, or other assessments or payments remain unpaid after all victim payments have been paid, additional money collected shall be

applied to payment of those fines, costs, or other assessments or payments. If victim payments remain unpaid after all fines, costs, or other assessments or payments have been paid, additional money collected shall be applied toward payment of those victim payments. MCL 712A.29(2).